IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4268 OF 2005

Manual Anthony Fernandes and another).. Petitioners

Versus

State of Maharashtra and another).. Respondents

Mr.J.M.D'Silva for the Petitioners.

Mr.L.V.Jain for Respondent No.2.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 4TH JULY 2005

P.C.:

. This Petition has been filed against the order dated 5th May 2005 passed in R.A.E.& R. Suit No.302/524/02 whereby the trial Court has held that it has jurisdiction to try the Suit. However, the trial Court has held that it has jurisdiction to entertain and try the Suit. The Plaintiff's Suit for possession on the ground of unlawful subletting, transfer or assignment of the suit premises has been declared to be barred by limitation. The contention of the Petitioners in this Petition is that the trial Court had no jurisdiction to entertain and try the Suit as an earlier Suit had been dismissed for default and, therefore, a fresh Suit could not be filed on the same cause of action.

2. The earlier Suit had been filed for enhancement of rent from 1st March 1981. However, that Suit was dismissed for default as stated in the Plaint. The present Suit is confined to the arrears in respect of the period from 1st February 1999 to 31st December 2001. Obviously, this being a different period for which the arrears of rent have been fallen due, the Suit cannot be barred. Hence, rejected.